

September 12, 2014



Talbot County Planning Commission
Final Decision Summary

Wednesday, August 6, 2014 at 9:00 a.m.

Bradley Meeting Room

11 N. Washington Street, Easton, Maryland

Attendance:

Commission Members:

Thomas Hughes
William Boicourt
Michael Sullivan
Paul Spies
Jack Fischer

Staff:

Sandy Coyman, Planning Officer
Mary Kay Verdery, Assistant Planning Officer
Mike Pullen, County Attorney
Tony Kupersmith, Assistant County Attorney
Brett Ewing, Planner I
Martin Sokolich, Long Range Planner
Mike Mertaugh, Assistant County Engineer
Carole Sellman, Recording Secretary

1. Call to Order—Commissioner Hughes called the meeting to order at 9:00 a.m.

2. Decision Summary Review—July 2, 2014—The Commission noted the following corrections to the draft decision summary:

- a. Line 183, change to read: “Commissioner Hughes stated the request regarding the waivers is reasonable, provided the use of the building is strictly limited to the uses requested and approved, and if the Planning Commission puts said limitation in the site plan approval.”
- b. Line 259, insert the words “off site” after “proposed”.

Commissioner Spies moved to approve the draft Planning Commission Decision Summary for July 2, 2014, as amended; Commissioner Fischer seconded the motion. The motion carried unanimously.

3. Old Business—None.

4. New Business

- a. Administrative Variance—Candice Sundt, #A207—932 Riverview Terrace, St. Michaels, MD 21663, (map 202, parcel 1137, zoned Town Residential), Douglas Edsall, Edsall Design Group, Inc., Agent.

Mr. Ewing presented the staff report of the applicant’s request for construction of a second floor addition over an existing porch totaling 227 square feet of new gross floor area. The proposed expansion will be located no closer to mean high

53 water than the existing dwelling at 27.6 feet and no closer to the side property line
54 than eight feet.

55
56 Staff recommendations include:

- 57
- 58 1. The applicant shall make an application to the Planning and Permits
59 Department and follow all rules, procedures, and construction timelines as
60 outlined regarding new construction.
 - 61 2. The applicant shall commence construction on the proposed improvements
62 within eighteen (18) months from the date of the Planning Office's "Notice to
63 Proceed".
- 64

65 Douglas Edsal, Edsal Design Group, Inc. and Bill Daffin appeared with applicant
66 Candice Sundt. Mr. Edsall stated the addition would be located over the existing
67 second floor, and there is no new disturbance or impervious surface being created.
68 The deck exists and they are trying to recoup usable living space. There is a flat
69 roof with a leak and creating a new pitched roof should address this problem.

70

71 Commissioner Hughes asked for public comments; none were made.

72

73 Commissioner Boicourt moved to recommend to the Planning Officer to approve
74 the administrative variance for Candice Sundt, 932 Riverview Terrace, St.
75 Michaels, Maryland, provided compliance with staff recommendations occurs;
76 Commissioner Sullivan seconded. The motion carried unanimously.

77

- 78 b. Preliminary Plan Review—Still Waters LLC c/o Clarke Enterprises, #L1208—
79 Miles River Road, Easton, MD 21601 (map 24, grid 19, parcels 39, 43, 44 and
80 210, zoned Rural Conservation/Western Rural Conservation), Sean Callahan,
81 Lane Engineering, LLC, Agent.
- 82

83 Mr. Ewing presented the staff report and brief history for the preliminary plan
84 review of the major revision to revise and convert 21 lots to 6, abandon Sunnyside
85 Drive (50' wide public right of way), and create Riverslie Drive (40' wide private
86 road right of way). Riverslie Drive will impact stream and wetland buffers in the
87 critical area requiring a variance from the Board of Appeals.

88

89 Staff recommendations include:

90

- 91 1. Address the July 9, 2014 Technical Advisory Committee comments of
92 Planning and Permits Department, Department of Public Works,
93 Environmental Health Department, Talbot Soil Conservation District, the
94 Environmental Planner and the Critical Area Commission prior to final plat
95 submittal.
 - 96 2. The applicant shall apply for a variance for proposed private road impacts to
97 stream and wetland buffers in the Critical Area.
- 98

Bruce Armistead and Sean Callahan, Lane Engineering, LLC, appeared on behalf of client.

Commissioner Hughes questioned the issue of sewage disposal areas on two of the lots. Mr. Callahan stated that 21 lots had been reduced to six lots. The sewage disposal area to serve Lot 6 is to be expanded to serve a larger house in the future. He has met with Anne Morse of the Environmental Health Department regarding this issue. The sewage disposal areas issue has been resolved and must be shown on the plat.

Mr. Armistead stated the only material change from the prior plan is the proposal for six lots instead of five. There is a potential purchaser of the larger easternmost lot who requested two lots instead of one. Mr. Callahan designed it to meet the 20 acre requirement. The applicant desires a smaller lot leaving more tillable land, but it cannot meet the five acre requirement and therefore requires a waiver. Mr. Ewing pointed out that any waiver would have to be handled at final plan review.

Mr. Armistead stated this issue must be addressed so final approval would come in the future. Some state permits are outstanding, but are expected to be in hand before the Board of Appeals meeting; the applicant will seek permission to schedule the meeting now. Commissioner Hughes stated the Commission does not object as long as the same plan is reviewed by the Board. Staff had no objections.

Commissioner Hughes asked for public comments; none were made.

Commissioner Boicourt moved to grant preliminary approval of major revision to Still Waters Farm, LLC for revision and conversion of 21 lots to six lots; abandon Sunnyside Drive (50' wide public road right of way); and create Riverslie Drive (40' wide private road right of way). The Commission would be amenable to a waiver of lot size for Lot 6R to reduce the size from 20 acres to allow more land to be given to agricultural use. The Commission is amenable to scheduling with the Board of Appeals before receipt of MDE permits, provided applicant has permits before advertisement date. Commissioner Spies seconded. The motion carried unanimously.

- c. Fred Israel and Lesley Israel—6397 Cedar Cove Road, Royal Oak, MD 21662 (map 40, grid 14, parcel 60, zoned Rural Conservation), Sean Callahan, Lane Engineering, LLC, Agent.

Mr. Ewing presented the staff report and history for the four lot subdivision with two private roads, as well as for a lot size waiver for Lots 2 and 3, and a waiver for a pier without a primary dwelling on Lot 1.

Staff recommendations include:

1. Address the July 9, 2014 Technical Advisory Committee comments of Planning and Permits Department, Department of Public Works, Environmental Health Department, Talbot Soil Conservation District, the Environmental Planner and the Critical Area Commission prior to preliminary plat submittal.

Sean Callahan of Lane Engineering, LLC, and Lesley and Fred Israel were present. Mr. Callahan stated that Lot 4 is a 3.7 acre wooded parcel and is designed to retain as much forest as possible. He further stated that private road frontage is provided to the 44 acre lot. There is currently no house on that lot so a waiver will be needed to retain existing pier. Mr. Callahan said he believed the Critical Area will support this approach.

Commissioner Hughes asked for public comments; none were made.

Commissioner Sullivan moved to approve:

1. the lot size waiver for Lots 2 and 3,
2. the waiver for the pier without primary dwelling on lot 1, as long as the proposed plat remains the same as reviewed by the Commission;

Commissioner Boicourt seconded. The motion carried unanimously.

Commissioner Fischer moved to recommend granting sketch plan approval for Fred Israel, Cedar Cove Road, Royal Oak, MD, provided compliance with staff recommendations occurs; Commissioner Boicourt seconded. The motion carried unanimously.

d. Amend the Talbot County Code, Site Plans, §190-184 to increase the limitation for minor site plan review—Bill No. 1290

Mr. Ewing presented the amendment which proposes to increase the maximum gross floor area that may be approved through submission of a minor site plan. Currently the code permits the minor site plan review for structures up to 300 square feet. After consulting with the County Council, staff now proposes 2,500 square feet as the new threshold for minor site plans.

After discussion, Commissioner Spies moved to recommend to the County Council the minor site plan standard be increased to 2,500 square feet or 25% of existing primary structure, whichever is greater; Commissioner Fischer seconded. The motion carried 4 to 1. (Commissioner Sullivan voted nay.)

e. A Bill to amend tier maps for the Villages of McDaniel, Wittman, Royal Oak, Bozman and Neavitt—Bill No. 1289.

Mr. Coyman presented Bill No. 1280 to amend the tier maps. He said in the Villages of McDaniel, Wittman, Royal Oak, Bozman and Neavitt lots or parcels, or parts thereof within the Village Center zone and within the priority funding

191 area will be reclassified as Tier IIIb. The objective is to bring the tier maps into
192 consistency with the existing zoning, the designation as a priority funding area
193 and also water and sewer service plan designations. The adoption of the Bill
194 would not incorporate any of the tier maps into the County's Comprehensive
195 Plan. The Planning Commission and County Council would have the right to
196 formally adopt a final set of tier maps and incorporate those into the
197 comprehensive plan. Any changes made after the tiers are incorporated in the
198 comprehensive plan would require a formal change to the plan.
199

200 Mr. Coyman summarized the existing tier classifications:
201

- 202 1. Tier IIIa—Areas that are not planned for public sewerage systems in
203 the County Comprehensive Plan or Comprehensive Water and Sewer
204 Plan, that are located in rural villages or other existing rural
205 communities and which are planned for limited infill and peripheral
206 development only.
- 207 2. Tier IIIb—Rural villages or existing communities or neighborhoods
208 designated as water quality strategy areas, which have or are planned
209 to have public sewerage systems and that are planned for infill and
210 limited peripheral development only.
- 211 3. Tier IV—Areas that are not planned for public sewerage systems in
212 the County Comprehensive Plan or Comprehensive Water and Sewer
213 Plan that are planned or zoned for and/or dominated by agricultural,
214 resource protection, preservation, and/or conservation areas.
215

216 Mr. Pullen stated the amendment's purpose is to reset the starting point for the tier
217 discussion. He has seen some of the letters the Commission received expressing
218 concerns about growth, etc. This Bill has nothing to do with growth or density;
219 those issues are going to be determined later in the process. This Bill does two
220 things; it makes the maps consistent with the maps for the other villages. It maps
221 the entire Village Center zone in the priority funding area as Tier 3b. Tier 3b
222 makes those parcels eligible for sewer service at the enhanced nutrient removal
223 wastewater treatment plant as opposed to septic. The second thing it does makes
224 those maps more consistent with underlying intent of SB-236. The tier map
225 amendments restart the discussions. As the Comprehensive Planning process goes
226 forward and changes to those existing conditions are discussed and developed,
227 public comment is received, and the Planning Commission make its
228 recommendations there will be plenty of opportunity to discuss those proposed
229 changes.
230

231 Commissioner Boicourt clarified that both the existing maps and the amended
232 maps, until the comprehensive plan is finalized and in place, are interim maps.
233 Commissioner Hughes noted that Mr. Pullen had stated several times that these
234 maps cannot be aspirational; they had to represent what is on the ground now. Mr.
235 Pullen stated that at this point that is correct, but ultimately they will reflect the

aspirations that are adopted through the Comprehensive Plan process in the zoning maps, density, and lot size.

Commissioner Hughes asked why is Wittman a IIIb and Cordova not? Mr. Pullen said because there is no sewer in Cordova. The plan is to extend sewer to Bozman, Neavitt, Wittman, Claiborne and McDaniel, and that has been a subject of discussion for many years for many reasons. The plan is to extend sewer to the five villages. Tier IIIa is not eligible for sewer service, Tier IIIb is.

Commissioner Hughes questioned why proposed amended maps recognize the aspirational potential expansion of sewer as appropriate and the existing tier map's reflection of the existing comprehensive plan's land use policies is inappropriate. Mr. Pullen stated some of the maps were created according to Bill No. 1229. Commissioner Fischer noted that the existing tier maps and those proposed in Bill 1289 reflect a variety of policies, which are inconsistent and this will take work to bring all maps and policies into a consistent whole.

Commissioner Sullivan concurred with Commissioner Fischer's assessment that curing one inconsistency causes another inconsistency. He said that the Planning Commission conducted careful analysis of factors such as EMS, flood plains, evacuations, traffic, the character of the villages, in order to ensure that the existing tier maps most effectively reflected the land use policies of the current comprehensive plan.

Commissioner Hughes stated the proposed maps do not appear to be any better than the current maps. He would be willing to spend hours fixing them, but as Commissioner Fischer stated it would be a futile exercise because (a) they are temporary and do not have any enduring legal significance; and (b) the proposed new maps contain aspirational anomalies along with land use implications inconsistent with the existing comprehensive plan. Further he said that it would be impractical to attempt to conduct another detailed review before the current comprehensive plan review is complete.

Commissioner Fischer moved Bill No. 1289 not be recommended to the County Council because neither the maps in Bill No. 1229 or Bill No. 1289 are consistent with all the policies in the current comprehensive plan, and any map now is an interim map; Commissioner Sullivan seconded. The motion carried unanimously.

- f. Approval of ranking and final list of easement application to be submitted to the MALPF Program for 2015.

Martin Sokolich, Long Range Planner and Local Program Officer for the MALPF Program, seek approval of the easement offer applications submitted for the 2015 round. There were 45 applications and we can submit eight. It is a quantitative process based on soil quality, acres of farm, amount of land and land preserved around them.

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283
284 After discussion, Commissioner Spies moved to approve the ranking of the final
285 list of easement applications to be submitted to the MALPF Program for 2015;
286 Commissioner Boicourt seconded. The motion carried unanimously.
287

- 288 g. A Bill to provide that the twenty-five foot buffer from the nontidal wetlands shall
289 not apply to certain regulated activities authorized by the Maryland Department of
290 the Environment pursuant to a permit or letter of exemption—Bill No. 1292.
291

292 Ms. Verdery introduced Bill No. 1292 which adds the following language:
293 "Regulated activities within nontidal wetlands and their buffers authorized by a
294 permit or letter of exemption from the Maryland Department of the Environment
295 are not subject to this requirement." A local Board of Appeals variance request
296 will not be required in areas evaluated by and authorized for impacts through the
297 Maryland Department of the Environment permitting process. The Council
298 requested additional information from the Office of Law.
299

300 Mr. Pullen stated his memo outlines the legal issues. Maryland Department the
301 Environment has a fairly extensive application and plan review process. The
302 applicant must show that the proposed impacts cannot be avoided. If they cannot
303 be avoided they must show impact is necessary and must be mitigated.
304

305 Commissioner Hughes suggested this issue be settled in the courts before the
306 County takes further action. Commissioner Hughes asked Mr. Pullen to explain
307 the current case. Mr. Pullen stated a property owner on School House Lane in
308 Royal Oak applied for and obtained a Maryland Department of the Environment
309 permit to build a house and a berm infiltration pond on his property. The
310 Maryland Department of the Environment process involved a public
311 informational hearing. The County was not involved in that. Finally Maryland
312 Department of the Environment found that the impacts were unavoidable, the
313 property owner came through the Board of Appeals to apply for a variance to do
314 the impacts which had already been approved by the state.
315

316 The Board of Appeals did not approve the variance. Commissioner Fischer stated
317 Bill No. 1292 cedes the last residual control the County has over the wetlands.
318 Commissioner Hughes objected to the state allowing berm infiltration ponds in
319 poor soil locations especially adjacent to wetlands as this is a health hazard.
320

321 Commissioner Spies asked if we are making a recommendation or is the litigation
322 going to trump the Commission decision. Mr. Pullen stated the litigation brought
323 this situation to his attention. The purpose of this bill is not to resolve this case; it
324 is to resolve the policy issue for this County. Commissioner Hughes asked if the
325 bill wouldn't make this case moot. Mr. Pullen stated that was better discussed in
326 executive session.
327

On a motion by Commissioner Sullivan and seconded by Commissioner Boicourt the Planning Commission moved to meet in executive session to receive legal advice from council; the motion carried unanimously.

The Planning Commission returned to its regular session at 1:45 p.m.

The consensus of the Commission is to delay further action until the courts resolve this issue. Commissioner Fischer moved to recommend against Bill No. 1292 as the issue is currently being adjudicated and the Commission desires the County retain as much influence as possible on the nontidal wetlands; Commissioner Sullivan seconded. The motion carried unanimously.

h. A Bill to authorize the Board of Appeals to grant variances from specific standards or criteria for granting special exceptions—Bill No. 1293.

Ms. Verdery introduced Bill No. 1293, §190-182A.(3) noting that it contains language providing that a variance may not be granted to regulations or conditions for which a special exception may be or has been granted. Variances only pertain to term bulk requirements and density requirements and regulations for specific land uses requiring a special exception are not bulk requirements.

The amendment proposes to strike §190-182A.(3)(c) and to also amend the last sentence of Bulk Requirements. Staff noted that the definition of bulk requirements is slightly different than that noted in the proposed Bill due to a change in the definition relating to cottage industries. This difference has no material effect on the subject at hand and can be disregarded as it will be corrected as a scrivener's error.

Commissioner Spies moved to recommend to the County Council to approve Bill No. 1293, to authorize the Board of Appeals to grant variances from certain standards for special exceptions applied with the amendments suggested in the July 25, 2014 Memorandum included; Commission Fischer seconded. The motion carried unanimously.

i. Amendments to Pier Legislation—Bill No. 1287.

Ms. Verdery stated that the Council introduced a bill to define pier width length and cumulative area totals for platforms, floating docks, finger piers, catwalks and boatlifts, and raised walkways widths over nontidal wetlands. During the public hearing Mr. Brandon Weems proposed several amendments. County Council has asked that the Planning Commission review the proposed amendments.

Commissioner Hughes asked what was the net result of the proposal to meet state standards for lifts. Ms. Verdery stated the change would be to allow six lifts with no more than four boat lifts. The County Council recommended four lifts with no more than two jet ski lifts.

374 Next, Ms. Verdery explained Mr. Weems' request for the addition of the words
375 "or the channelward edge of tidal wetlands" in §190-75D(1). This would move
376 the point from which the permitted pier length would be measured waterward.
377 Several Commissioners objected as the County has worked to limit the visual
378 impact of piers for decades.

379
380 Next, Ms. Verdery stated that Mr. Weems also proposed to increase the finger
381 pier area limit from 60 square feet to 120 square feet. The Commissioners
382 discussed the appropriate number of finger piers.

383
384 Ms. Verdery stated that Mr. Weems' Item 5 would allow the addition of lifts that
385 do not increase platform area; his Item 6 relates to the requirement that
386 replacement piers be consistent with 190-169F (in-kind replacement only
387 permitted) and a 12 month replacement time period.

388
389 The Commission asked if the 12 month permitted replacement period was for
390 application or completion. Ms. Verdery stated that construction must be started
391 within one year, however the Planning Director can grant a one-year extension.

392
393 Ms. Verdery stated item 7 addresses §190-75F(4) which does not limit the
394 number of finger piers per boat slip; however, the addition of a finger pier may
395 create a new boat slip which may be limited. COMAR does limit finger pier width
396 and length so this amendment would be helpful.

397
398 Commissioner Fischer moved to recommend approval to the County Council of
399 Bill No. 1287, with amendments as outlined in items 2, 5 and 7 of the July 25,
400 2014 Memorandum; Commissioner Boicourt seconded. The motion carried
401 unanimously.

402
403 Commissioner Fischer moved to reject amendment No. 1 to Bill No. 1287 as
404 outlined in the July 25, 2014 Memorandum, Commissioner Boicourt seconded.
405 Motion carried 3 to 2. (Commissioners Sullivan and Spies voted nay)

406
407 Commissioner Sullivan moved to recommend approval to County Council of
408 amendment No. 6 as outlined in the July 25, 2014 Memorandum, Commissioner
409 Boicourt seconded the motion. The motion carried unanimously.

410
411 Commissioner Fischer moved to reject amendment No. 3 as outlined in the
412 July 25, 2014 Memorandum, Commissioner Boicourt seconded. The motion
413 carried unanimously.

414
415 Commissioner Spies moved to recommend approval to County Council of
416 amendment No. 4 as outlined in the July 25, 2014 Memorandum, increasing
417 fingers piers; Commissioner Boicourt seconded. The motion carried 4 to 1.
418 (Commissioner Hughes voted nay)

420 Adjourn for lunch and executive session at 12:50 p.m.

421
422 Readjournal at 1:45 p.m.

423
424 **5. Discussions Items**

425
426 Planning Office has hired a Permits Manager to assist in and oversee the permitting
427 process. We are working toward implementing MUNIS citizens self service so that
428 citizens can check their permit status online and eventually submit a permit online.

429
430 Mr. Coyman announced he will be retiring October 1, 2014. Commissioner Hughes
431 stated he is dismayed to hear this. He has worked over the years with five different
432 Planning Officers and thinks Mr. Coyman has been the most diligent, well informed and
433 pleasant of all he has dealt with. Considering the heaps and heaps of regulations the state
434 keeps throwing at it, he has kept the County in an admirable position where we are
435 generally first in line to get any fruits of playing nice with the state, and over time it is
436 better to do things that way than to be constantly at each other's necks. Over the years Mr.
437 Hughes has lobbied the town and state government to update its wastewater treatment
438 plants because (a) it is the right thing to do and (b) when you do you will be first in line.
439 As a result he thinks this County got something in the neighborhood of close to \$50
440 Million in the Region II plant and the Easton plant because we were ahead of the curve
441 instead of behind the curve. He is sorry Sandy is retiring and hopes the County can find
442 someone half as diligent as Sandy.

443
444 **6. Staff Matters**

445
446 **7. WorkSessions**

- 447 a. Comprehensive Plan—Minutes of the work session are provided under separate
448 cover.

449
450 **8. Commission Matters**

- 451
452 **9. Adjournment**—Commissioner Hughes adjourned the Planning Commission meeting at
453 1:55 p.m. and proceeded to the worksession.